

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACOBO JAVIER RIVERA,

Defendant.

MEMORANDUM DECISION AND
ORDER DENYING DEFENDANT'S
MOTION TO DISMISS
INDICTMENT

Case No. 2:05-CR-491 TS

This matter is before the Court on Defendant Jacobo Javier Rivera's Motion to Dismiss Indictment, filed January 10, 2006. The government filed its response on January 25, 2006. At a hearing held on January 31, 2006, on a separate defense motion, the Court indicated to the parties that it would render its decision on the instant Motion without oral argument. As such, the Court, having read the pleadings and the file, having heard arguments of counsel, being otherwise fully advised, will deny Defendant's Motion.

On November 23, 2005, Defendant was charged by Superseding Indictment¹ with five counts of Production of Child Pornography, in violation of 18 U.S.C. § 2251(a). On November 30, 2005, Defendant entered a plea of not guilty to the charges.

Defendant now makes an “as applied” challenge to the constitutionality of § 2251(a) with regard to the facts of this case. However, notwithstanding Defendant’s citation to the earlier Tenth Circuit *Riccardi*² case, this Court is bound by the Tenth Circuit’s recent *Jeronimo-Bautista*³ case. The Tenth Circuit decided *Jeronimo-Bautista* after *Riccardi* and, more importantly, after the Supreme Court’s decision in *Raich*.⁴

The *Jeronimo-Bautista* decision was issued on appeal from this Court’s granting of a motion to dismiss on the same grounds argued here with the same statute at issue. This Court is bound by that decision, which upheld the constitutionality of the statute at issue.

There is no legal basis upon which the Court may disregard the clear precedent set forth in *Jeronimo-Bautista*, and the Court declines to do so.

Based upon the above, it is hereby

ORDERED that Defendant’s Motion to Dismiss Indictment (Docket No. 40) is DENIED.

¹ Docket No. 24.

² *United States v. Riccardi*, 405 F.3d 852 (10th Cir. 2005).

³ *United States v. Jeronimo-Bautista*, 425 F.3d 1266 (10th Cir. 2005).

⁴ *Gonzalez v. Raich*, ___ U.S. ___, 125 S.Ct. 2195 (2005).

SO ORDERED.

DATED this 2nd day of February, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Stewart", is written over a horizontal line.

TED STEWART
United States District Judge